

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:15-CV-459-F

PHILIP RACALBUTO, JR,  
Plaintiff,

vs.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,  
Defendant.

**ORDER**

Before the court are the parties' cross-motions for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. [DEs 21, 24]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Robert B. Jones, Jr. entered a memorandum and recommendation ("M&R"), recommending the court deny Plaintiff's motion, allow Defendant's motion and affirm Defendant's decision. [DE 27]. To date, no objections have been filed.<sup>1</sup>

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[ ] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for "clear error" and need not give any explanation for adopting

<sup>1</sup> Judge Jones filed the M&R on August 23, 2016. Accordingly, objections were due on or before September 6, 2016. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); Local Civil Rule 72.4(b).

the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R [DE 27] and of the record generally, having found no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff's motion for judgment on the pleadings [DE 21] is DENIED, Defendant's motion for judgment on the pleadings [DE 24] is ALLOWED, Defendant's final decision is AFFIRMED, and this action is DISMISSED. The Clerk of Court is directed to close this case.

SO ORDERED.

This the 9th day of September, 2016.

  
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**JAMES C. FOX**  
Senior United States District Judge